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FM AMEMBASSY MOSCOW
TO RUEHC/SECSTATE WASHDC PRIORITY 0977
INFO RUCNCIS/CIS COLLECTIVE
RUEHDX/MOSCOW POLITICAL COLLECTIVE

C O N F I D E N T I A L SECTION 01 OF 02 MOSCOW 009206

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E.O. 12958: DECL: 08/21/2016
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SUBJECT: KHODORKOVSKIY-ASSOCIATED NGO HIT WITH HUGE TAX BILL

Classified By: DCM Daniel A. Russell. Reasons 1.4b and d.

¶1. (C) SUMMARY. Russian tax authorities recently imposed a USD 180,000 bill for back taxes on an NGO headed by one of Mikhail Khodorkovskiy's lawyers. The Federal Tax Service claims the Center for International Legal Defense (CILD) owes taxes on grants it has received from the National Endowment for Democracy (NED) and other foreign donors. CILD head Karina Moskalenko told us that the NGO was targeted because of its participation in the Other Russia conference, which took place shortly before the tax bill was delivered. Other human rights activists said that CILD was also targeted because of its court successes and its close connection to Yukos and Khodorkovskiy.

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CILD Targeted by Tax Service...

¶2. (SBU) In late July, the Russian Federal Tax Service (FTS) filed a major tax claim against CILD after it was checked three times by tax inspectors. The total tax claims and fines against CILD are about USD 180,000, which if collected could potentially put the NGO out of business. The FTS claims that the center failed to pay profit taxes on grants totaling USD 500,000 received between 2002 and 2004 from the Ford Foundation, the Soros Open Society Institute, the MacArthur Foundation, and NED. CILD's lawyers are trying to reach an agreement with the FTS; if that fails, they will appeal the claims in Russian courts. CILD General Director Oksana Preobrazhenskaya told the press the NGO would pursue its case at the European Court of Human Rights (ECHR) if necessary.

¶3. (SBU) According to Russian tax law, recipients of grants must meet two conditions for tax-exempt status. The grant money has to be used for one of the specific pre-approved purposes established by the Russian Government (support of education, culture, human rights, the environment, and certain health issues), and the grantor has to be on the Russian Government list of organizations that can give tax-free grants. Grant money given to NGOs otherwise is subject to 24 percent corporate income tax, and the grantee's purchases are also subject to Value Added Tax (in most cases, 18 percent). The NED, which gave CILD USD 105,000 between 2002 and 2005, is not on that list. CILD lawyers, however, cite a 1992 U.S.-Russian bilateral agreement, which was never ratified by the Duma, under which no grants from that organization are taxable because it is a U.S. government organization.

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...Because Too Successful

¶4. (SBU) CILD won the first-ever case brought against the GOR before the ECHR. Moskalenko and other CILD attorneys have represented defendants in several high profile cases,

including Khodorkovskiy and his codefendant Platon Lebedev, as well as Igor Sutyagin, a researcher accused of espionage. It also provides training to Russian attorneys and legal assistance to Russians who want to file cases before the ECHR.

15. (SBU) Russian authorities unsuccessfully attempted to have Moskalenko disbarred in 2005 and have lodged other complaints against her, including efforts to have her removed from cases before the ECHR. The GOR never objected to CILD's receipt of foreign funding, however, even though it kept them informed about its grants. In 2005, however, authorities re-interpreted the tax law and ruled that grants received for human rights activities could be taxed.

Tax Claim Politically Motivated

16. (C) Moskalenko told us recently that she believed the tax claim was politically motivated and that having to pay the tax bill would likely put CILD out of business. Moskalenko believed these measures were in response to her participation in the Other Russia conference, as well as her continued visits to see Khodorkovskiy about every 4-6 weeks. (NOTE: Her last visit was in June, and she plans to visit him again in August.) Moskalenko fears that her staffers will lose their jobs or face intimidation if the tax bill is actually collected. Additionally, her husband was dismissed from his job at a classified nuclear research facility, two months before qualifying for his pension.

17. (SBU) At the beginning of August, thirty of the most influential NGOs in Russia -- including the Moscow Helsinki Group, Memorial, and For Human Rights -- issued a joint

MOSCOW 00009206 002 OF 002

statement claiming the tax case against CILD was politically motivated. The activists asserted that the authorities waited until after the G8 Summit to begin a campaign of harassment against legal experts, and that CILD was the first target. Human rights activists worry that the same claims can be made against any of them and could lead to their organizations being bankrupted and shut down. Independent Legal Council member Mara Polyakova told the press that if the FTS claims are upheld, it could set a precedent that could be used against any NGO receiving foreign grants.

18. (C) Darya Miloslavskaya, a legal specialist, said that article 251 of the Tax Code, which covers the taxation of grants, is written so that it can be interpreted to the state's benefit in any situation. Gerald Staberock, Director of the Global Security and Rule of Law Program of the Geneva-based International Commission of Jurists (ICJ), of which Moskalenko is a member, concurred, noting that the ICJ believed authorities were engaged in selective enforcement of the law in retaliation for CILD's success in exposing the GOR's violations of human rights. Moscow Carnegie Center analyst Liliya Shevtsova predicted continued targeted harassment of NGOs as Russian law enforcement officials test both the extent of Kremlin interest in cracking down on "Western" NGOs and Western government reaction in the G8 aftermath.

19. (C) COMMENT. Although much attention has been focused on the NGO law and its implementation, tax claims against CILD suggest other methods exist to pressure NGOs. The Ambassador plans to raise this case next week with senior GOR officials while reinforcing U.S. interest in a transparent and fair process of re-registering foreign NGOs.

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